



Comptroller General
of the United States

Washington, D.C. 20548

317134

Decision

Matter of: McGhee Construction, Inc.

File: B-255863

Date: April 13, 1994

Timothy S. Kerr, Esq., Elliott, Vanaskie & Riley, for the protester.

Gregory H. Petkoff, Esq., and Albert Guarino, Esq.,
Department of the Air Force, for the agency.

Christina Sklarew, Esq., and Michael R. Golden, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Bid may not be corrected after bid opening where the bidder did not intend to include in its bid any additional amounts for the work involved.

DECISION

McGhee Construction, Inc. protests the Department of the Air Force's refusal to allow McGhee to correct an alleged mistake in a bid the firm submitted under invitation for bids (IFB) No. F23606-93-B-0021. We deny the protest.

The IFB sought lump-sum bids for the repair of storm drains around military family housing on Whiteman Air Force Base in Missouri. The solicitation explains that the work would primarily consist of regrading yards to provide proper slope for drainage, correcting the existing contours where necessary through a combination of drop inlets, and retaining walls. After regrading, the disturbed areas would either be seeded or sodded.

When bids were opened as scheduled on September 23, 1993, the Air Force found that McGhee had submitted the apparent low bid. Since McGhee's bid was 22 percent lower than the next low bid, it appeared that the firm might have made a mistake in preparing its bid; accordingly, the contracting officer requested that the firm verify the amount of its bid. In response, the protester asserted that it had made two mistakes, and requested that it be permitted to increase its bid accordingly. The Air Force agreed that the mistakes were made but denied McGhee's request to correct its mistakes by increasing the amount of the bid because it concluded that while there was clear and convincing evidence

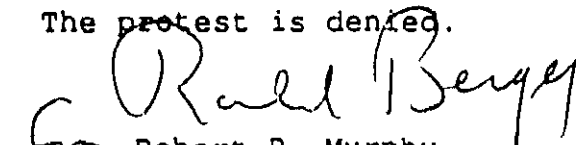
to support a mistake in the bid, there was no such evidence to support the amount of the bid actually intended. This protest followed.

McGhee states that when bids were opened and it became aware of the disparity between its own bid and the next low bid, it reviewed its bid carefully and discovered that it contained two significant mistakes. The first error occurred when the protester failed to include any charges for the removal and replacement of topsoil. The second error occurred when McGhee significantly underestimated its direct costs for sodding. After bids were opened, McGhee was informed by its proposed subcontractor that its direct costs for sodding should have been approximately 50 percent higher than the costs that it submitted in its original bid. McGhee argues that these mistakes are based upon a misreading of the specification and are not "mistakes of judgment," and are therefore of the type susceptible to correction. McGhee seeks to include an amount to cover the topsoil work and to increase the price it bid for the sodding and also to include a 30-percent factor to cover its general and administrative and profit for these additional amounts; the relief sought is \$133,934, which increases McGhee's bid from \$641,007 to \$774,941. The second low bid is \$820,123.

The Federal Acquisition Regulation (FAR) authorizes an agency to correct a mistake if clear and convincing evidence establishes both the existence of the mistake and the bid actually intended. FAR § 14.406-3(a). Additionally, the FAR provides that if evidence of a mistake is clear and convincing only as to the mistake, but not as to the intended bid, or the evidence reasonably supports the existence of a mistake but is not clear and convincing, the agency may permit a withdrawal of the bid. FAR § 14.406-3(c).

We think the agency reasonably denied correction since there is no reasonable basis for the determination that the protester intended to bid \$774,941. McGhee did not intend to include any specific amount for the topsoil work; it also did not intend an amount for sodding other than what it included in its bid computation. Under such circumstances, denial of the request for correction was proper. See Central Builders, Inc., B-229744, Feb. 25, 1988, 88-1 CPD ¶ 195.

The protest is denied.


Robert P. Murphy
Acting General Counsel